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Dated: January 14, 2008

Electronic Signature for Danielle L. Herritt: /Danielle L. Herritt/

Docket No.: BSZ-017  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Raphael J. Mannino *et al.*

Application No.: 10/759,381

Confirmation No.: 6695

Filed: January 15, 2004

Art Unit: 1618

For: COCHLEATE PREPARATIONS OF FRAGILE  
NUTRIENTS

Examiner: N. G. Ebrahim

**RESPONSE TO RESTRICTION REQUIREMENT**

MS Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This communication is responsive to the Office communication mailed from the United States Patent and Trademark Office on December 13, 2007 for the above-identified application.

As a preliminary matter, Applicants respectfully request confirmation that the amendment presented in the response filed August 29, 2007 was entered.

***Restriction Requirement***

Applicants respectfully reiterate that, responsive to the Office Action dated June 29, 2007, Group I (claims 1-20 and 29-37) were elected without traverse for continued examination. Applicants also reiterate that it is their understanding that, upon finding of an allowable product claim, process claims and/or method of use claims that depend from the product claim or otherwise include all of the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP §821.04.

*Election of Species*

The Office communication indicates that the Applicants' election of species filed August 29, 2007 was not fully responsive. In order to comply with the Examiner's request, Applicants respectfully provide the following election of species/subspecies:

- a. fragile nutrient component: phytochemical (claims 8-10)
  - i. beta-carotene (claim 10)
  - ii. *no election required*
- b. additional cargo moiety: vitamin (claim 14)
- c. one product: a food item (claim 17-18)
  - i. health bar (claim 18)
  - ii. *no election required*
- d. *no election required*
- e. a method of delivering fragile nutrients to a subject (claims 30-33)
  - i. health bar (claim 30)
  - ii. *no election required*
- f. administration route: oral (claim 34)

With regard to the Examiner's requirement for an election of "one product," in section c, *supra*, Applicants would like to point out for the record that the cochleates of the present invention may be incorporated into any composition (*e.g.*, a pharmaceutical composition as indicated in claim 16), not solely the food item or personal care product encompassed by claims 18-20, chosen as representative by the Examiner. However, in order to be fully responsive to the Examiner's requirement, Applicants have chosen a species from those specifically set forth by the Examiner. Moreover, Applicants respectfully point out, with regard to the Examiner's comment that a skin care product "does not correspond to the nutrient," that a skin care product can certainly include a nutrient cochleate of the present invention, *e.g.*, a beta-carotene cochleate.

It is Applicants' understanding that the species and subspecies elections are for searching purposes only. Thus, upon the allowance of a generic claim, Applicants are entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

**SUMMARY**

If a telephone conversation with Applicants' attorney would help expedite the prosecution of the above-identified application, the Examiner is invited to contact the undersigned.

Dated: January 14, 2008

Respectfully submitted,

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